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Report of the Working Group on the Universal Periodic Review*

Congo

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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Introduction

1. During the seventeenth session of the Human Rights Council's Working Group on the Universal Periodic Review, which was held from 21 October to 1 November 2013, the national report of the Republic of the Congo on the implementation of first-cycle recommendations was considered on 30 October and 1 November 2013.

2. On that occasion, the Congo presented its achievements in the area of the promotion and protection of human rights in the four years since it first underwent the universal periodic review in 2009.

3. The interactive dialogue gave the Congo the opportunity to reaffirm its attachment to the universal values inherent in the human person.

4. One hundred and seventy-one (171) recommendations were made by 73 States. One hundred and sixty-one (161) recommendations were accepted; three (3) recommendations regarding discrimination on account of sexual orientation did not receive the support of the Congo; and seven (7) recommendations were placed under consideration.

5. The objective of the present document is to provide replies to the latter seven recommendations. It also supplies additional information on certain issues already addressed during the review.

I. Responses of the Congo to the recommendations placed under consideration

6. The recommendations have been grouped into three categories.

A. Recommendations relating to the International Criminal Court

1. "Ratify the Kampala amendments to the Rome Statute, if possible with a view to contributing to the activation of the jurisdiction of the International Criminal Court over the crime of aggression at the beginning of 2017" (Liechtenstein) – recommendation 113.1

7. The Republic of the Congo is not opposed to ratifying the Kampala amendments, insofar as the crime of aggression falls within the jurisdiction of the International Criminal Court in the same way as genocide, war crimes and crimes against humanity.

8. **As a result, the recommendation is accepted.**

2. "Ratify the Agreement on the Privileges and Immunities of the International Criminal Court" (Estonia) – recommendation 113.2

9. Current relations between the International Criminal Court and African States are a genuine cause for concern. The majority of the prominent persons targeted by International Criminal Court procedures are African.

10. This state of affairs increases the sense of mistrust that African leaders feel with regard to the International Criminal Court.

11. The Heads of State and Government of the African Union who gathered for an extraordinary conference in Addis Ababa (Ethiopia) on 20 October 2013 expressed their indignation and requested a reform of the Rome Statute, in particular an amendment to article 27 in favour of African leaders, in accordance with articles 121 to 123 of the Statute.

12. As is known, this problem divides the States parties to the Rome Statute into two diametrically opposed camps: on the one hand, those who oppose such a reform, which would, in their view, grant impunity to African leaders guilty of genocide and other crimes against humanity; on the other hand, the supporters of the reform, comprising mainly African countries.

13. During the twelfth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, which was held in The Hague from 20 to 28 November 2013, this difference of opinion merely grew. The Republic of the Congo took a position endorsing the reform supported by the majority of African countries.

14. This reform appears all the more necessary given that indicting Heads of State and Government while they are in office has implications for peace and stability in Africa. The immunity of African Heads of State, which must be understood as forming part of the system of State immunity and not diplomatic immunity, is a guarantee of independence, national unity, territorial integrity and the observance of international treaties and agreements.

15. The non-observance of these principles is a real impediment to cooperation between the International Criminal Court and African States.

16. The Congo, adopting the same stance as the majority of African States, is therefore justified in not yet intending to ratify the Agreement on the Privileges and Immunities of the International Criminal Court. It believes that the Rome Statute should be interpreted in such a way as to ensure respect for the sovereignty of States, and that complementarity should be the only source of competence for the International Criminal Court.

17. **This recommendation does not enjoy the support of the Congo.**

3. **"Fully implement all obligations under the Rome Statute in its national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC, and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts" (Netherlands) – recommendation 113.4**

18. The Congo ratified the Rome Statute of the International Criminal Court on 3 May 2004. In so doing, it approved and agreed to endorse the commitments and obligations contained in the Statute, in line with the principles of international law.

19. At present, the general obligation to cooperate included in **Part IX** of the Rome Statute is honoured without need to incorporate it in domestic law. An illustration of this is the working visit to Brazzaville paid by the Office of the Prosecutor of the International Criminal Court, accompanied by two court clerks, in order to hear the three defence witnesses in the case of **Jean Pierre Bemba**. At the end of the mission, the International Criminal Court sent a letter of thanks to the Congo for its cooperation.

20. In summary, the fact that the obligations under the Rome Statute have not been integrated in the domestic legal order does not in itself constitute an obstacle to their fulfilment.

21. Moreover, **Act No. 8-98** of 31 October 1998, defining and punishing genocide and crimes against humanity, is a perfect example of the incorporation of the provisions of international law in general, and of the Rome Statute in particular, into Congolese criminal law. These crimes, which are defined in international criminal law, are punishable by the most severe penalties. The commission of such crimes gives rise to the effective prosecution of their perpetrators.

22. **Given these considerations, recommendation 113.4 has already been implemented and is therefore accepted.**

B. Recommendations on invitations to Human Rights Council mandate holders

Extend a standing invitation for all mandate holders (Hungary), [and] ... to all thematic special procedures (Montenegro, Slovenia) – recommendations 113.5, 113.6 and 113.7

23. The Congo reiterates its commitment to cooperate with all United Nations bodies in general, and with those of the Human Rights Council in particular.

24. Cooperation between the Congo and the special procedures of the Human Rights Council has been conducted in previous years through:

- The visit of the Special Rapporteur on the rights of indigenous peoples, from 2 to 12 November 2010;
- The visit of the Working Group on Enforced or Involuntary Disappearances, from 24 September to 3 October 2011.

25. These visits are a demonstration of the commitment of the Government of the Congo to cooperate with mechanisms for the promotion and protection of human rights.

26. Congo intends to maintain this cooperation.

27. Particular attention will be given to requests for working visits addressed by special procedures.

28. **Congo will continue to consider invitations on a case-by-case basis. These three recommendations do not enjoy the support of the Congo.**

C. Recommendations relating to the rights of the child

"Consider becoming a party to the Optional Protocol to the CRC on a communications procedure" (Thailand) – recommendation 113.3

29. in addition to a national normative framework in which the main statute is Act No. 4/2010 of 14 June 2010 on child protection in the Republic of the Congo, the Congo is already a party to nearly all the additional protocols to the Convention on the Rights of the Child.

30. The report of the Congo on the implementation of the Convention on the Rights of the Child was adopted by the United Nations Committee on the Rights of the Child at its sixty-fifth session, on 14 January 2014 in Geneva.

31. It is with this impetus that the Government of the Congo has recently initiated the procedure for ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

32. Recommendation 113.3 relates to that course of action and is receiving the full attention of the Congolese State.

33. **This recommendation enjoys the support of Congo, as it is already being implemented.**

II. Additional observations

34. The Republic of the Congo plans to convey supplementary information in order to further apprise the Working Group on the Universal Periodic Review of the following points.

A. The revision of codes

35. In the period since the Congo underwent the universal periodic review for the second time, the Ministry of Justice and Human Rights, under the authority of the Minister of State, Keeper of the Seals and Minister for Justice and Human Rights, has endeavoured to put in place a framework for debate and consultation with a view to developing the necessary mechanisms and strategies for a profound reform of all the codes of the Congolese judicial and penitentiary system.

36. To this end, the resource persons responsible for preparing the first drafts of the various codes have already been identified and officially notified by the Cabinet of the Minister of State, Keeper of the Seals and Minister for Justice and Human Rights.

37. In order to complete this work, the Congo is receiving support from the European Union through the Action Project to Strengthen the Rule of Law and Associations **(PAREDA)**.

38. The various codes to be reformed or developed are the following:

- Criminal Code;
- Code of Criminal Procedure;
- Civil Code;
- Code of Civil Procedure;
- Family Code;
- Administrative Code;
- Judicial Code;
- Prison Code.

39. This wide-ranging reform will enable the Congo to modernize its entire legal arsenal, most of whose enactment date back to the colonial era.

B. Women's rights

40. The status of Congolese women has improved over time. Considerable progress has been made with regard to gender equality, training and employment. Their level of participation in national public life in the political and administrative spheres is encouraging. The role of women in Congolese society is increasingly prominent.

41. Nevertheless, certain difficulties, which are due to a sociocultural context characterized by male supremacy, still constitute obstacles to the full enjoyment of women's rights. Congolese women continue to face discrimination, particularly with regard to inheritance after the death of their husband. Some outdated traditional practices persist, even though they are punishable by law.

42. Numerous awareness-raising activities are undertaken by the Ministry for the Advancement of Women and the Integration of Women in Development with a view to

changing attitudes. The reform of the Family Code will be an opportunity to provide effective responses on this matter.

C. Allegations of torture

43. Under articles 9 and 10 of the Constitution of 20 January 2002, the practice of torture is strictly prohibited in the Congo. As previously when allegations of torture and deaths in detention are confirmed, the perpetrators are punished in accordance with the relevant criminal provisions.

44. This will to combat acts of torture was recently illustrated by a case involving cruel, inhuman and degrading treatment inflicted by police officers during the arrest of young women who were engaging in indecent exposure.

45. In the light of their actions, the police officers were taken in for questioning.

46. **At the disciplinary level**, administrative proceedings were brought against them for the purpose of establishing a commission of inquiry.

47. **At the judicial level**, the proceedings established the responsibility of the police sergeant and other officers for public indecency and indecent assault with violence, offences recognized and punishable by law under articles 330 and 312 of the Criminal Code.

48. The facts were presented to the public prosecutor of the court of major jurisdiction in Brazzaville, pursuant to judicial procedure No. 52/DGP/DPJ/SEC of 18 January 2013.

D. Conditions of detention

49. Congolese prisons were built during the first half of the twentieth century. Their original capacity has been greatly exceeded. The solution to this problem lies in the refurbishment of old prison facilities and the construction of new prisons that conform to international standards. This project is under way.

50. In order to put an end to excessively long periods of pretrial detention, the Keeper of the Seals and Minister for Justice and Human Rights has recently instructed public prosecutors and examining judges to expedite procedures in order to grant bail to detainees awaiting trial, and parole to convicted prisoners who have already served over half their sentence. Courts in Brazzaville and Pointe-Noire that face such problems are actively preparing to carry out these instructions.